

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CHARLES D. WHEAT,

Plaintiff,

vs.

CAMERON DANIEL, et al.,

Defendants.

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Case No. 4:06CV00874 ERW

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff's Amended Motion for Leave to Amend the Claims Against Defendants Daniel, Clark, Newson, White, Thompson, Mitchell, and Harry; and Add Two Newly Discovered Claims and Eight Defendants [doc. #112] and Plaintiff's Motion Requesting that Eight Defendants be Served With a Summons and Copy of the Second Amended Complaint [doc. #108].

Plaintiff requests permission to file an Amended Complaint in this case, to add additional claims against the Defendants who are already party to this suit, to add two new claims, and to add eight new defendants. Plaintiff seeks permission to make these amendments based upon information learned in discovery.

Leave to amend a complaint "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). Absent good reason for denial, such as undue delay, dilatory motive, undue prejudice, or bad faith, a request for leave to amend should be granted. *Thompson-El v. Jones*, 876 F.2d 66, 67 (8th Cir. 1989). There is no indication that Plaintiff's request is the result of undue delay, dilatory motive, or bad faith, nor do Defendants argue that any prejudice would result from this


amendment. Additionally, the allegations against the eight new defendants relate directly to the gravamen of Plaintiff's original complaint.

Defendants' reasons for opposing this motion are (1) that Plaintiff has failed to exhaust his available administrative remedies before filing suit, (2) that Plaintiff's Amended Complaint fails to satisfy the "same transaction" test required under Fed. R. Civ. P. 15(a), and (3) that Plaintiff fails to state a claim as he has not alleged a "meeting of minds." These arguments fail. Defendants' first and third arguments above are appropriately raised in a dispositive motion and do not provide the Court with an appropriate basis to deny Plaintiff's motion to amend. Plaintiff's second argument also fails as the rule upon which Defendants rely deals with when an amendment will relate back for statute of limitations purposes, and is not a bar to the amendment of a complaint. Therefore, Plaintiff's Motion to Amend will be granted.

IT IS HEREBY ORDERED that Plaintiff's Amended Motion for Leave to Amend the Claims Against Defendants Daniel, Clark, Newson, White, Thompson, Mitchell, and Harry; and Add Two Newly Discovered Claims and Eight Defendants [doc. #112] is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Requesting that Eight Defendants be Served With a Summons and Copy of the Second Amended Complaint [doc. #108] is **GRANTED**. Due to Plaintiff's incarceration, the Clerk's Office shall effect service of Process for Plaintiff in this matter.

Dated this 5th Day of December, 2007.


E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE